IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

1. S.B.Civil Contempt Petition No.72/2006
   Asu Dan @ Hasu Dan. vs. Goru and others.

2. S.B.Civil Contempt Petition No.73/2006
   Budhe Dan. vs. Sohan Ram and others.

3. S.B.Civil Contempt Petition No.74/2006
   Asu Dan @ Hasu Dan. vs. Goru and others.

Date : 22.5.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.JL Purohit, for the petitioner.

Mr.SK Vyas, GA) for the respondents.
Mr.IR Choudhary)

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BY THE COURT :

REPORTABLE

Heard learned counsel for the parties.

All these three contempt petitions involve common questions, therefore, they are decided by this common order.

It appears from the facts of the case that an

order was passed on 23.12.1976 in Case No.11/76 (State through Tehsildar, Parbatsar vs. Chotia and others) under Section 175 of the Rajasthan Tenancy Act wherein the possession of the defendants was found prior to 22.9.1956 and, therefore, the proceedings for eviction of those non-applicants Chotia and others were dismissed by Assistant Collector, Parbatsar. It appears from the order Annexure-2 placed on record in writ petition no.1734/2005, which is a copy of order dated 31.10.1998 passed by Tehsildar, Deedwana that a suit for eviction of same above persons, the petitioners, having no.5/98 was filed by applicants Chanderki etc. and the private respondents in the writ petition. That suit of the private respondents in the writ petition filed under Section 183B of the Tenancy Act was also dismissed on 31.10.1998.

The petitioners who were successful in earlier two litigations thereafter filed three suits for declaration and injunction before the Court of Assistant Collector, Parbatsar which were decreed by the said court. Copies of judgments of the Court of Assistant Collector, Parbatsar were annexed in these three writ petitions. The Assistant Collector declared the plaintiffs as khatedar tenants of the land in dispute mentioned in the suit and also granted decree for permanent injunction against the defendants who are

private respondents in the writ petitions. The judgment and decree of the Assistant Collector was challenged by the said defendant in all three cases by three separate appeals which were dismissed by the appellate court and thereby the decree against the defendants in plaintiffs/petitioners' suit were upheld by the appellate court. The defendants (respondents in the writ petitions) preferred second appeal before the Board of Revenue which was allowed by the Board of Revenue by separate judgments after observing that merely on the basis of possession, no declaration of khatedari rights can be made. The Board of Revenue, therefore, dismissed the suit of the petitioners of these writ petitions. The petitioners, therefore, preferred these writ petitions to challenge the judgments of the Board of Revenue.

Since the private respondents put in their appearance in these writ petitions. This Court on 28.3.2005 directed both the parties to maintain status quo with respect to the property in question. The stay order is continuing.

The petitioners in all these three contempt petitions submitted that despite the above facts and despite the fact that there is no order of competent authority for opening the mutation in the name of private respondents, who were never in possession of

the property in dispute and there is no decree against the petitioners from any court, still the patwari made entries in the revenue record of mutation and in consequence thereof entered the private respondents as khatedar tenants in the jamabandi. It appears from the jamabandi, copies of which are placed on record by the respondents no.1 and 2, private respondents, that the entries in the jamabandi were made subsequent to the stay order dated 28.3.2005. In the copy of jamabandi, it is mentioned that the mutation in all the cases were opened in pursuance of the decision of Board of Revenue. The fact on the face of it is absolutely wrong because of the reason that the Board of Revenue merely dismissed the suit of the present petitioners, original plaintiffs. The Board of Revenue never directed that the name of the private respondents be entered into the revenue record.

At this place, it will be worthwhile to mention here that if the dismissal of the suit of the plaintiff could have entitled the defendants to get their names entered into the revenue record including in record of right, then prior to it, the private respondents suit was dismissed is also a fact. Be it as it may be, there are several judgments on the point that during the pendency of litigation, the entries in the revenue record should not be changed. In the present case, it

appears that not only the entries were made in the revenue record in favour of the private respondents without there being any order of the competent authority and also has been made on false pretext that the Board of Revenue has ordered so.

The above facts were taken note of because of the fact that those were the contentions of learned counsel for the petitioners which prima-facie make out a case that the Patwari or any Revenue Officer who was instrumental in making changes in the revenue record has done it just to give favour to the private respondents and to overreach the process of the Court but since the Tehsildar concerned or the Patwari are not party in the contempt petition and more than one year had already passed to the entries made in the jamabandi, therefore, no purpose will be served by impleading them parties in the contempt petition. The other reason is that in fact, the petitioners' contention is that the revenue authorities took help of an order of the Board of Revenue to make wrong entries in the revenue record, then that is also not a ground for holding them liable for contempt of this Court because of violating any order of this Court. The facts mentioned in the contempt petitions are more about the manner in which the revenue authorities worked rather than any allegation of flouting the order of this

Court.

So far as the private respondents are concerned, in fact, the allegations against the private respondents of cultivating the land are absolutely vague and, therefore, on the basis of that plea of the petitioners, it cannot be said that the private respondents in violation to the order dated 28.3.2005 entered into the field after the order dated 28.3.2005. It is also not very specifically pleaded that the petitioners were dispossessed from the land in dispute. Therefore, I do not find any justification for punishing the private respondents in these contempt petitions.

So far as the S.D.O. is concerned, who has been impleaded as party in these contempt petitions, that appears to have been wrongly impleaded because none of his acts have been condemned by the petitioners.

In view of the above reasons, all these three contempt petitions are dismissed and notices are discharged.

Copy of this order be sent to the Principle Revenue Secretary for taking appropriate action departmentally so that the Principle Revenue Secretary may issue appropriate instructions to the revenue

authorities dealing in the matter of making entries in the revenue record of mutation and the entries in the jamabandi, the record of right, to be careful while making entries in the revenue record or while making any changes in the revenue record so that several judgments of this Court and the Board of Revenue declaring that during pendency of the litigation, the entries in the revenue record should not be changed be strictly followed and whenever it is found that the revenue entries have been made during pendency of litigation and without any order of the competent authority, then stern action may be taken against those irresponsible persons who indulged in such type of tactics in relation to the properties of the agriculturists who constitute about 80% of the population of India.

(PRAKASH TATIA), J.

S.Phophaliya